

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ABULKHAIR,

Plaintiff,

v.

PAGE-HAWKINS, et al.,

Defendants.

Civil Action No.: 10-2368 (JLL)

ORDER

This matter, having come before the Court by way of Plaintiff's commencement of a civil action, and it appearing that:

1. Plaintiff filed a Complaint on May 7, 2010.
2. On October 5, 2010, the Court entered a Notice of Call for Dismissal advising Plaintiff that the instant action would be dismissed as to Jeanette Page-Hawkins and the State of New Jersey on October 19, 2010 for failure to effect service of the summons and complaint on said defendants. On October 20, 2010, having received no response from Plaintiff, the Court dismissed the instant action as to Defendants Jeanette Page-Hawkins and the State of New Jersey pursuant to Federal Rule of Civil Procedure 4(m). On October 21, 2010 Plaintiff submitted a response to this Court's Notice of Call for Dismissal, which was dated October 20, 2010. Therein, Plaintiff explained that, to the extent Defendants had not been properly served, such was beyond his control inasmuch as the U.S. Marshal was directed by way of Order dated May 13, 2010 to serve a copy of the summons and complaint on all defendants.
3. On October 27, 2010, Plaintiff filed an appeal of this Court's October 20, 2010 Order dismissing his action as to Defendants Page-Hawkins and the State of New Jersey with the Court of Appeals for the Third Circuit.
4. On October 29, 2010, Defendants Page-Hawkins and the State of New Jersey were served with a copy of the summons and complaint by the U.S. Marshal.
5. In light of Plaintiff's appeal of this Court's October 20, 2010 Order, the Court took no action with respect to said order or Plaintiff's October 21, 2010 or January 6, 2011 submissions related thereto. See generally Sheet Metal

Workers' Int'l Ass'n Local 19 v. Herre Bros., Inc., 198 F.3d 391, 394 (3d Cir. 1999) ("It is well established that 'the filing of a notice of appeal . . . confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.'").

6. On January 24, 2011, the Office of the Attorney General of the State of New Jersey submitted a letter on behalf of Defendants Page-Hawkins and the State of New Jersey advising the Court that no responsive pleading had been filed because the Court's October 20, 2010 Order of dismissal remained in place and requesting 30 days to respond to Plaintiff's Complaint in the event that the Court vacates its October 20, 2010 Order of dismissal.
7. On the same day, Plaintiff filed a request for entry of default as to Defendants Page-Hawkins and the State of New Jersey pursuant to Federal Rule of Civil Procedure 55(a).
8. On January 31, 2011, the Court received notice from the Court of Appeals that Plaintiff's appeal in this matter was dismissed pursuant to Federal Rule of Appellate Procedure 42(b).


In light of the foregoing, **IT IS** on this **1st day of February, 2011**,

ORDERED that this Court's October 20, 2011 Order of dismissal as to Defendants Page-Hawkins and the State of New Jersey be and is hereby vacated; and it is further

ORDERED that Defendants Page-Hawkins and the State of New Jersey have thirty (30) days from the date of entry of this Order in which to respond to Plaintiff's Complaint; and it is further

ORDERED that Plaintiff's request for entry of default as to Defendants Page-Hawkins and the State of New Jersey, filed under Docket Entry No. 22, is accordingly denied.

IT IS SO ORDERED.



JOSE L. LINARES,
UNITED STATES DISTRICT JUDGE